

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Milo L. Pike

vs.

Case #  
94-00266

**Name of Respondents**

Dean Witter Reynolds Inc.  
Elizabeth Bennett Rice

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**REPRESENTATION**

Claimant, Milo L. Pike ("Claimant"), was represented by Edgar D. McKean, III, Esq., from the law firm of McKean, Mattson and Latici located in Gilford, New Hampshire.

Respondents Dean Witter Reynolds, Inc. ("Dean Witter") and Elizabeth Bennett Rice ("Rice") (collectively, "Respondents"), were represented by Jody E. Forchheimer, Esq., from the law firm of Bingham, Dana & Gould, located in Boston, Massachusetts.

**CASE INFORMATION**

Statement of Claim was filed on January 21, 1994.

Claimant's Submission Agreement was signed on January 19, 1994.

Joint Statement of Answer was filed by Respondents on May 4, 1994.

Respondent Dean Witter's Submission Agreement was signed on May 12, 1994.

Respondent Rice's Submission Agreement was signed on: May 6, 1994.

**HEARING INFORMATION**

Hearing Dates/Sessions:	February 3, 1995	-	2 sessions
	February 8, 1993	-	1 session
	March, 20, 1995	-	1 session

Hearing Location: NASD offices located in Boston, Massachusetts.

### **CASE SUMMARY**

Claimant contends that he employed Respondents in 1988 and 1989 as a broker whose duty was to make large stock acquisitions. Claimant asserts that as part of her duties Respondent agreed to monitor the stock purchases and to notify his attorney as he accumulated stock levels which required reporting to the SEC. Furthermore, the Claimant alleges that Respondents breached their duty by failing to notify his attorney which led to violations of SEC filing requirements under Sections 13(d) and 13(d)(2). Claimant contends that due to this failure to file, the SEC levied fines against him which he defended and lost. Claimant demands that Respondents pay for the fines and the cost incurred defending himself.

Respondents counter that they were never employed by Claimant as a broker responsible to make SEC filings but only offered to assist the Claimant at no compensation. Respondents contend that Respondent Rice nevertheless repeatedly warned Claimant that she could not effectively assist him because the volume of purchases, over \$50MM, were too high and the information he supplied to her was untimely. Moreover, Respondents state that Respondent Rice notified Claimant that late filings were likely to occur and therefore, his contributory negligence for not altering the reporting system was chiefly responsible for the late filings. Respondent asserts that the SEC imposed the fines to equitably adjust for the stock price which was paid versus the higher price which would have been paid had the filing been made; therefore, Claimant should not recover damages. Respondent also contends that the attorney's fees claimed were actually generated from defending against insider-trading charges and not in defense of the primary claim in this case.

### **RELIEF REQUESTED**

Claimant requests \$100,000 from Respondent for SEC fines and \$59,907.47 for attorney's fees.

Respondent requests dismissal of the claims.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted by Claimant against Dean Witter are denied.
2. All claims for attorney's fees are denied.

**FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed and shall be divided equally between the parties.

Non-refundable Filing Fee: \$250.00

Hearing Session Fees: \$3,000.00 (4 sessions @ \$750.00 per session).

Total Fees: \$3,250.00

1. Claimant is assessed \$1,500.00. Claimant previously paid \$950.00 and owes a balance of \$550.00.
2. Respondents are assessed \$1,500.00.

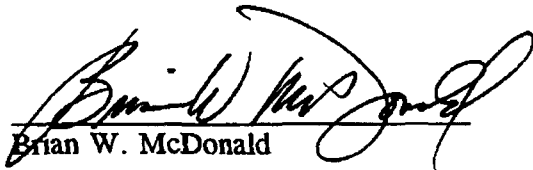
Fees are payable to the National Association of Securities Dealers, Inc.

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**ARBITRATION PANEL**

Richard J. Grahn, Esq.	-	Public Chairman
Brian W. McDonald	-	Industry Panelist
Priscilla F. Gray, Esq.	-	Public Panelist

Concurring Arbitrator's Signature

  
Brian W. McDonald

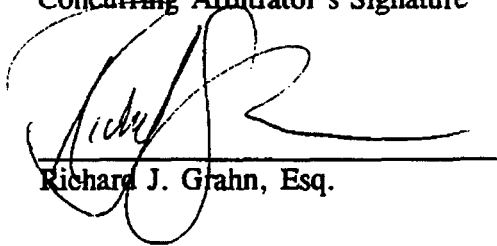
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Concurring Arbitrator's Signature

  
Richard J. Grahn, Esq.

NASD Date of Decision:

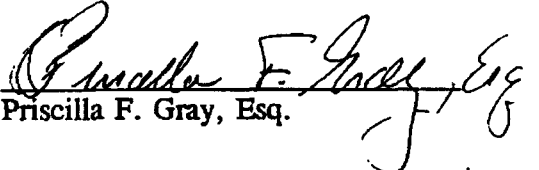
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Priscilla F. Gray, Esq.

NASD Date of Decision: May 10, 1995